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IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLN. NO.241 OF 1998

Mahendra Nanjibhai Mehta & Anr. .. Petitioners

versus

State of Maharashtra & Anr .. Respondents

...

Mr.A.P. Mundargi i/b Amol V. Doijode for the petitioner.

Mrs.M.M. Deshmukh, APP for State.

Mr. Mahesh Jethmalani i/b Pranav Badheka & S.N.Raj for respondent no.2.

CORAM : D.G.KARNIK, J

DATED : 10th December 2007

ORAL JUDGEMENT:-

1. Heard learned counsel for the petitioner, the respondent no.2 and learned PAP for the State.

2. By this revision petition, the petitioners challenge the order dated 2nd September 1998 passed by the Metropolitan Magistrate, 14th Court, Girgaum

rejecting the petitioner’s application for discharge.

3. The respondent no.2 filed a complaint before the Addl.Chief Metropolitan Magistrate, 14th Court at Girgaum interalia alleging that the petitioners were the Directors of Saurashtra Cements and Chemical Industries Ltd. (for short "Saurashtra Cements") The respondent no.2 through his wife Devakidevi had dealing with Saurashtra Cements for more than 35 years, but no amount was due by Devkidevi or the respondent no.1 to Saurashtra Cements. However, said Saurashtra Cement falsely prepared a document purporting to be an acknowledgment of the balance due which was signed by B.M. Attara (original accused no.3, who is since deceased, and is hereinafter referred to as the "accused no.3"). The accused no.3 was also an employee of Saurashtra cements. The present petitioners who were the directors in charge and managing the day to day affairs of Saurashtra Cements with the help of accused no.3 had prepared the false acknowledgement and had sought to use the same as a valuable security and/or an acknowledgement of the liability against the respondent no.2 and/or his wife in a civil suit filed against them. The respondent no.2 alleged that he/his had given a limited Power of Attorney to accused no.3 for a different purpose. The said Power of Attorney did

not give any authority to the accused no.3 to acknowledge any liability and the letter of acknowledgement was falsely prepared under the signature of respondent no.3 by the petitioners and the Saurashtra Cements without any power or authority to the accused no.3. All the accused had acted in collusion and had prepared the false document and were trying to use it as evidence and thereby they had committed offences of forgery and other offences.

4. Upon receipt of the complaint from the respondent no.2, the learned Chief Metropolitan Magistrate passed an order under section 156 of the Code of Criminal Procedure directing the Gamdevi Police station to investigate into the matter. The police accordingly carried out the investigation and came to the conclusion that the petitioners and other accused had colluded together and had committed an offence of forgery and criminal breach of trust. They thereupon filed a charge-sheet before the learned Chief Metropolitan Magistrate on 22nd March 1990. The learned Magistrate took cognisance and issued summons to the petitioners and the accused no.3.

5. The two petitioners thereafter filed two separate petitions bearing Criminal Application 870

of 1990 and Criminal Application 871 of 1990 in this court for quashing the order of the Magistrate issuing process and for quashing the proceedings. By an order dated 13th June 1997, this court rejected both the petitions. It appears that thereafter applications were moved before this court stating that the petitions were heard and dismissed ex-parte and that there was a sufficient cause for the petitioners to remain absent and therefore the petitions be restored to file and re-heard on merits. The petitions were accordingly restored and the petitioners were heard. By an order dated 23rd July 1997, this court again dismissed the petitions on merits. That order was challenged by the petitioners before the Supreme Court by filing Special Leave Petition nos.2505 and 2506 of 1997. By an order dated 4th September 1997, the Special Leave Petitions were dismissed.

5. Each of the petitioners thereafter filed separate applications before the learned Magistrate for their discharge. By his order dated 2nd September 1998, the learned Metropolitan Magistrate dismissed both the applications. The present revision petitions are filed against the said order of the learned Metropolitan Magistrate rejecting the applications of the petitioners for their discharge.

6. Section 239 of the Code of Criminal Procedure says that if upon considering the police report and the documents sent with it under section 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers that the charge against the accused to be groundless, he shall discharge the accused and record his reasons for doing so. Section 239 thus enables and requires the Magistrate to discharge the accused if the Magistrate considers that the charge against the accused to be groundless. The opinion of the Magistrate that the charge against the accused is groundless must be formed after considering the police report and the documents sent with it under section 173 and after making such examination of the accused as the Magistrate considers necessary. The order is to be passed after giving the accused and the prosecution an opportunity of hearing. It is evidence that while considering to pass or not to pass an order of discharge, it is not necessary for the Magistrate to assess in detail the evidence or the weight to be attached thereto and to come to a conclusion whether the prosecution would ultimately be able to prove the charges. The Magistrate has only to consider the

averments made in the police report the documents sent along with it and after examination, if any, of the accused as the Magistrate considers necessary and come to the conclusion whether the charge against the accused is groundless. If the Magistrate considers that there is no material in support of the prosecution or if he finds that the averments in the police report taken as they are and the material in support, even if believed, no offence is made out then the Magistrate is entitled to discharge the accused. At that stage, the enquiry is limited and the Magistrate proceeds on the assumption that the averments made in the police report and documents produced sent along with it would ultimately be proved. There may be a case wherein even if the averments made in the police report and documents are proved, they do not constitute any offence punishable under the Indian Penal Code or any other Act. It is in that event that the Magistrate is empowered to discharge the accused at that stage without wasting any further time because even if the averments are true, they constitute no offence.

7. Perusal of the complaint and the statements made by the witnesses in the case in hand, if believed, prima facie show commission of an offence by the petitioners. The averments in the police

report clearly show that the petitioners were in charge of Saurashtra Cements as directors. Accused no.3 was also an employee of Saurashtra Cements. It is undisputed that accused no.3 had signed the document which purported to be a balance confirmation letter and acknowledgement of liability. Copy of the Power of Attorney filed on record shows that it was given to accused no.3 only for the purpose of a dispute regarding Essential Commodities Act and it did not even remotely give any authority to the accused no.3 to execute a balance confirmation letter or to acknowledge any debt. Police report and documents further show that the accused no.3 signed the acknowledgement of debt and balance confirmation letter without authority and that acknowledgement was sought to be used against the respondent no.3 in the civil suit filed by Saurashtra Cements for recovery of money. Collusion is alleged between the accused nos.1, 2 and 3. Thus, the averments were that a false document was prepared by accused in collusion with each other and was sought to be used for the purpose of legal proceedings to prove the liability. It is true that the collusion between all the accused may or may not be proved at trial. But that is a matter of appreciation and evaluation of evidence at the trial. At this stage, it cannot be said that there was no material before the Magistrate to come

to the conclusion that the facts, if proved to be true, would constitute no offence punishable under the Indian Penal Code. A good defence may be available to the petitioners at trial and may be that they may prove that the accused no.3 had an authority to sign, or that the document of acknowledgement was not used in any civil proceedings or at all or that there was no collusion between all the accused but those are the matters to be decided at trial. I find no error in the order passed by the Magistrate refusing to discharge the petitioners. In my view, there is no merit in the revision petition.

7. Revision Petition is accordingly dismissed. Rule is discharged.

(D.G. KARNIK, J)